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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,070	10/15/2001	Gabriel Festoc	8076.231USW1	5661
23552	7590	02/26/2004	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			SIEW, JEFFREY	
			ART UNIT	PAPER NUMBER
			1637	

DATE MAILED: 02/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

S.A.

**Office Action Summary**

Application No.

09/981,070

Applicant(s)

Examiner

Jeffrey Siew

Art Unit

1637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 48-97 is/are pending in the application.
- 4a) Of the above claim(s) 1, 48-74 and 93-97 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 75-78 and 80-92 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) 79 is/are objected to.
- 8) ☒ Claim(s) 48-97 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group II is acknowledged. The traversal is on the ground(s) that the search is not unduly burdensome and lies within the same class as the other group III. This is not found persuasive because the process of amplifying may employ a plurality of unobvious variations in steps in filling, distributing and employing displacement with heating plate and the device may be used in hybridization assay.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1, 48-74 & 93-97 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper filed 6/6/03.

### ***Claim Objections***

2. Claim 79 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only--, and/or, --cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claim 79 has not been further treated on the merits.

### **SUMMARY**

3. Claims 75-78 & 80-92 are allowable. There is no prior art that teach or suggest the device with a cartridge having a plurality of reaction chambers and a reservoir, which are connected via channels, a heating plate with at least two distinct zones that can be heated to at least two different temperatures and means for relative displacement between cartridge and plate allowing cyclic variation. The closest prior art is Kellogg et al (US6,063,589) who teach a disk to drive fluid in PCR reaction and thermal resistors (see col. 36 line 34-50). However, Kellogg et al do not teach or suggest a means for relative displacement between cartridge and plate allowing cyclic variation or heating plate. Kopf-Sill teach a microfluidic device with different temperature zones (see col. 5 lines 53-56) but do not teach or suggest means for relative displacement between cartridge and plate allowing cyclic variation. It is recommended that non elected claims be cancelled and claim 79 be amended to incorporate the language of claim 1.

### **CONCLUSION**

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Siew whose telephone number before January 22, 2003 is (703) 305-3886 and thereafter can be reached at 571-272-0787. The e-mail address is Jeffrey.Siew@uspto.gov. However, the office cannot guarantee security through the e-mail system nor should official papers be transmitted through this route. The examiner is on flex-time schedule and can best be reached on weekdays from 6:30 a.m. to 3 p.m. If attempts to reach the

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examiner are unsuccessful, the examiner's supervisor, Gary Benzion, can be reached on (703)-308-1119.

Any inquiry of a general nature, matching or filed papers or relating to the status of this application or proceeding should be directed to the Tracey Johnson for Art Unit 1637 whose telephone number is (703)-305-2982.

Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Center numbers for Group 1600 are Voice (703) 308-3290 and FAX (703)-308-4242.

  
JEFFREY SIEW  
PRIMARY EXAMINER

February 21, 2004